

REMARKS

Claims 12 to 22 are pending. Claim 12 has been amended. No new matter has been added. In view of the foregoing amendments and the following remarks, Applicants respectfully submit that all of the presently pending claims are allowable.

Claim 12 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,000,188 (“Kojima”).

As regards the anticipation rejections, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

Claim 12, provides for a apparatus for obtaining physiological data of at least one person, and, as herein amended without prejudice, provides for “at least one sensor for detecting the physiological data, including a measured pulse rate of the at least one person; and a control unit configured to determine, on the basis of the physiological data, including on the basis of the measured pulse rate, the age of the at least one person.”

Kojima fails to disclose, or even suggest, determining the age of a person on the basis of physiological data, including on the basis of a measured pulse rate of the at least one person. Kojima compares a sampled pulse wave to reference pulse waves associated with different age groups. The comparison is based on calculating a correlation coefficient between the sampled pulse wave and a set of reference pulse waves. (See Kojima, column 3, lines 33 to 46). Kojima does not concern a pulse rate. Indeed, only a *single sampled pulse wave* is selected for comparison to the reference pulse wave set, so that the focus of Kojima is clearly on *wave shape* rather than *pulse rate*.

Accordingly, Kojima does not identically disclose, or even suggest, all of the features of claim 12, as presented, so that Kojima does not anticipate claim 12.

Withdrawal of this anticipation rejection of claim 12 is therefore respectfully requested.

Claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over German Patent Publication No. 198 56 129 (“Zander”) in view of Kojima.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Zander fails to disclose (nor has Zander been alleged to purportedly disclose), or even suggest, determining the age of a person **on the basis of physiological data, including on the basis of a measured pulse rate of the at least one person**. Zander only uses pattern recognition to estimate age.

As discussed above, Kojima fails to disclose or suggest determining the age of a person **on the basis of physiological data, including on the basis of a measured pulse rate of the at least one person**, and therefore does not correct the critical deficiencies of Zander.

Therefore, the combination of Zander and Kojima does not disclose or suggest all of the features recited in claim 12, so that the combination of Zander and Kojima does not render unpatentable claim 12 or its dependent claims, e.g., claim 13.

Withdrawal of this obviousness rejection of claims 12 and 13 is therefore respectfully requested.

Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima and U.S. Patent No. 6,393,136 (“Amir”).

Claims 14 and 15 depend from claim 12 and are therefore allowable over the cited references since Amir does not cure the critical deficiencies of Zander and Kojima described above with respect to the patentability of claim 12.

Withdrawal of this obviousness rejection of claims 14 and 15 is therefore respectfully requested.

Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima and U.S. Patent No. 5,071,160 (“White”).

Claim 16 depends from claim 12 and is therefore allowable over the cited references since White does not cure the critical deficiencies of Zander and Kojima described above with respect to the patentability of claim 12.

Withdrawal of this obviousness rejection of claim 16 is therefore respectfully requested.

Claims 17, 19 and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima, Amir and U.S. Patent Application Pub. No. 2002/0024633 (“Kim”).

Claims 17, 19 and 21 depend from claim 14 and ultimately from claim 12 and are therefore allowable over the cited references since Kim does not cure the critical deficiencies of Zander, Kojima and Amir described above with respect to the patentability of claims 12 and 14.

Withdrawal of this obviousness rejection of claims 17, 19 and 21 is therefore respectfully requested.

Claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima, Amir, Kim and U.S. Patent No. 6,154,559 (“Beardsley”).

Claim 18 depends from claim 17 and ultimately from claim 12 and is therefore allowable over the cited references since Beardsley does not cure the critical deficiencies of Zander, Kojima, Amir and Kim described above with respect to the patentability of claims 12 and 17.

Withdrawal of this obviousness rejection of claim 18 is therefore respectfully requested.

Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima, Amir, Kim and U.S. Patent Application Pub. No. 2002/0101337 (“Igaki”).

Claim 20 depends from claim 19 and ultimately from claim 12 and is therefore allowable over the cited references since Igaki does not cure the critical deficiencies of Zander, Kojima, Amir and Kim described above with respect to the patentability of claims 12 and 19.

Withdrawal of this obviousness rejection of claim 20 is therefore respectfully requested.

Claim 22 is rejected under 35 U.S.C. § 103(a) as unpatentable over Zander in view of Kojima, Amir, Kim and White.

Claim 22 depends from claim 17 and ultimately from claim 12 and is therefore allowable over the cited references since White does not cure the critical deficiencies of Zander, Kojima, Amir and Kim described above with respect to the patentability of claims 12 and 17.

Withdrawal of this obviousness rejection of claim 22 is therefore respectfully requested.

Accordingly, all of the pending claims 12 to 22 are allowable.

CONCLUSION

For at least the foregoing reasons, it is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully Submitted,

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